

# The Breakfast Club

## Constitutional Minute for 29 March 2022

### The Right of Self-Preservation

We established last week that you have a natural right of conscience; you also have a natural right of self-preservation, even if neither is mentioned in the Constitution.

Some people will point to the proclamation in the Declaration of Independence that we have an inalienable right to “Life, Liberty and the pursuit of Happiness.” Yes, that much is clear; and the Declaration does happen to be part of the Organic Law of the United States. But simply because you have a right to life, i.e. to remain living, the means of the preservation of your life is not explicit: is it government’s job to preserve your life, or yours, or do you each share in that responsibility? Laws proscribing murder provide no help: they do not even come into operation until a life has been taken. The Left would like to deny you the right to self-preservation, at least it applies to the use of a gun. So, do you have a right to preserve your own life or not?

All the great natural rights philosophers recognized a right of self-preservation. Thomas Hobbes put the right of self-preservation at the top of his catalog of laws of nature that constitute the “true moral philosophy.”<sup>i</sup> He wrote in “*Leviathan*”:

*“The Right Of Nature , which Writers commonly call Jus Naturale , is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, he shall conceive to be the aptest means thereunto.”* (Emphasis added)

John Locke took it a step further; not only could we defend ourselves, we could wreak havoc on whomsoever or whatever threatens us:

*“Self-preservation [is] a duty to God...I should have a right to destroy that which threatens me with destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion.”*<sup>ii</sup>

Notice that to Locke (and others agreed with him) we have a *duty* to preserve ourselves; but the duty is owed not to ourselves or our fellow citizens, but to our Creator.

Jean-Jacques Burlamaqui, the great French philosopher, wrote:<sup>iii</sup>

*“God is therefore willing, that everyone should labor for his own preservation and perfection, in order to acquire all the happiness, of which he is capable according to his nature and state...”*

The Founders took a similar view:

*“Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can. These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the first law of nature.”<sup>iv</sup>*

*“Self-preservation is the first principle of our nature. When our lives and properties are at stake, it would be foolish and unnatural to refrain from such measures as might preserve them because they would be detrimental to others.”<sup>v</sup>*

*“The right of self defense is the first law of nature.”<sup>vi</sup> (Emphasis added in all)*

So, if the Right of Self-Preservation/Self-Defense was universally recognized by moral philosophers and the Founders, why is this right not found in the Constitution? Most likely because the right went without saying, although we have no written record confirming that.

*“The Ninth Amendment is the repository for natural rights,” writes Leonard W. Levy in *Origins of the Bill of Rights*.<sup>vii</sup> But, Levy cautions: “no evidence exists to prove that the Framers intended the Ninth Amendment to protect any particular natural rights...we can only guess what the Framers had in mind.”*

The problem with the Ninth Amendment is that the rights it purports to protect must be “teased out of it.” And who should do the “teasing:” nine lawyers in black robes, or the rightful owners of the Constitution, i.e., the people? Hamilton makes clear in Federalist 78 that the people are the ultimate authority over what the Constitution says and means; in my view they are the only rightful agency with the authority to identify new (or old) rights which are to be protected by the Ninth Amendment. *“To say that the Framers did not intend the Court to act as a constitutional convention or to shape public policies by interpreting the Constitution is...to assert historical truth.”<sup>viii</sup>*

*“The right of the citizens to bear arms in the defense of themselves shall not be questioned.”<sup>ix</sup>*

Next week we will examine how the Second Amendment supports the Right of Self-preservation. Stay tuned.

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<sup>i</sup> *Leviathan*, xv, §40.

<sup>ii</sup> *Second Treatise on Government*, §16.

<sup>iii</sup> Jean-Jacques Burlamaqui, *The Principles of Natural And Politic Law*, 1748.

<sup>iv</sup> Samuel Adams, *The Rights of the Colonists, The Report of the Committee of Correspondence to the Boston Town Meeting*. November 20, 1772.

<sup>v</sup> Alexander Hamilton, *A Full Vindication*, December 15, 1774.

<sup>vi</sup> Henry St. George Tucker (in Blackstone's Commentaries).

<sup>vii</sup> Leonard Levy, *Origins of the Bill of Rights*, Yale University Press, 1999, p. 254.

<sup>viii</sup> *Ibid*, p. 243.

<sup>ix</sup> Pennsylvania Constitution, 1838, §21.